

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

RONALD W. COLLINS,

Plaintiff,

vs.

TANISHA MULHEAD HENRY, *et al.*,

Defendants.

Case No.: 2:23-cv-01812-GMN-MDC

**ORDER DENYING MOTION FOR
RECONSIDERATION**

Pending before the Court is the Motion for Reconsideration, (ECF No. 42), filed by Defendants Alex Bravo and Patrick Moreda. Plaintiff Ronald W. Collins filed a Response, (ECF No. 43), to which Defendants filed a Reply, (ECF No. 44). Also pending before the Court is Plaintiff's Motion for Leave to File a Surreply, (ECF No. 45).¹ Defendants filed a Response, (ECF No. 47), to which Plaintiff filed a Reply, (ECF No. 48).

Because Defendants failed to demonstrate that the Court committed clear error by denying their previous Motion to Dismiss, the Motion for Reconsideration is **DENIED**.

I. BACKGROUND

Plaintiff alleges that he was denied adequate medical treatment at High Desert State Prison ("HDSP") and was later retaliated against for filing an inmate grievance. (*See generally* Compl., ECF No. 9). He alleges that Defendants filed false disciplinary charges against him, and that his due process rights were violated during the disciplinary hearing. (*Id.*). This Court's previous Order Denying Defendants' Motion to Dismiss contains the relevant factual details,

¹ Plaintiff requests leave to file a surreply regarding Defendant Henry's alleged admission in another case that she failed to provide medical care. (*See generally* Mot. Leave, ECF No. 45). Local Rule 7-2(b) allows for a motion, a response, and a reply. "Surreplies are not permitted without leave of court; motions for leave to file a surreply are discouraged." *Id.* Because the purpose of a surreply is to address new matters raised in a Reply, and Plaintiff has already raised this argument in his Response brief, his Motion for Leave is DENIED.

1 which the Court incorporates by reference. (Order Denying Mot. Dismiss 1:16–3:14, ECF No.
2 41). Plaintiff brought a 28 U.S.C § 1983 First Amendment retaliation claim against all
3 Defendants and a 28 U.S.C § 1983 Fourteenth Amendment due process claim against
4 Defendant Moreda. (*Id.* 3:10–12). The Court denied Defendants’ Motion to Dismiss, and they
5 filed the instant Motion for Reconsideration.

6 **II. LEGAL STANDARD**

7 Generally, a district court may rescind an interlocutory order “[a]s long as a district court
8 has jurisdiction over the case, then it possesses the inherent procedural power to reconsider,
9 rescind, or modify an interlocutory order for cause seen by it to be sufficient.” *City of Los*
10 *Angeles, Harbor Div. v. Santa Monica Baykeeper*, 254 F.3d 882, 885 (9th Cir. 2001) (quoting
11 *Melancon v. Texaco, Inc.*, 659 F.2d 551, 553 (5th Cir. 1981)). This plenary power derives from
12 the common law and is not limited by the provisions of the Federal Rules of Civil Procedure.
13 *See id.* at 886–87. When a district court issues an interlocutory order, the power to reconsider
14 or amend that order is not subject to the limitations of Rule 59. *Id.* at 885 (quoting *Toole v.*
15 *Baxter Healthcare Corp.*, 235 F.3d 1307, 1315 (11th Cir. 2000)). Courts also derive power to
16 revise interlocutory orders from Federal Rule of Civil Procedure 54(b). Interlocutory orders
17 “may be revised at any time before the entry of a judgment adjudicating all the claims and all
18 the parties’ rights and liabilities.” Fed. R. Civ. P. 54(b).

19 While other districts in the Ninth Circuit have local rules governing motions to
20 reconsider an interlocutory order, the District of Nevada has “utilized the standard for a motion
21 to alter or amend judgment under Rule 59(e).” *See, e.g., Evans v. Inmate Calling Solutions*, No.
22 3:08-cv-0353-RCJ (VPC), 2010 WL 1727841, a *1 (D. Nev. Apr. 27, 2010); *Hanson v. Pauli*,
23 No. 3:13-cv-00397-MMD, 2015 WL 162987, at *1 (D. Nev. Jan. 13, 2015). A motion to
24 reconsider must set forth (1) a valid reason why the court should revisit its prior order; and (2)
25 facts or law of a “strongly convincing nature” in support of reversing the prior decision.

1 *Frasure v. U.S.*, 256 F. Supp. 2d 1180, 1183 (D. Nev. 2003). “Reconsideration is appropriate if
 2 the district court (1) is presented with newly discovered evidence, (2) committed clear error or
 3 the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling
 4 law.” *Sch. Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir.
 5 1993). A motion for reconsideration is properly denied if it presents no new arguments.
 6 *Backlund v. Barnhart*, 778 F.2d 1386, 1388 (9th Cir. 1985). “Whether or not to grant
 7 reconsideration[,]” however, “is committed to the sound discretion of the court.” *Navajo Nation*
 8 *v. Confederated Tribes & Bands of the Yakama Indian Nation*, 331 F.3d 1041, 1046 (9th Cir.
 9 2003).

10 **III. DISCUSSION**

11 Defendants make two arguments for reconsideration. First, they argue that the Court
 12 committed clear error by relying on two particular Ninth Circuit cases for its conclusion that
 13 Plaintiff sufficiently pled a due process violation. (Mot. Dismiss 4:11–6:5). Second, they argue
 14 that the Court committed clear error by failing to dismiss the retaliation claim. (*Id.* 6:8–7:25).
 15 “Clear error occurs when ‘the reviewing court on the entire record is left with the definite and
 16 firm conviction that a mistake has been committed.’” *Smith v. Clark Cnty. Sch. Dist.*, 727 F.3d
 17 950, 955 (9th Cir. 2013) (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948)).
 18 Motions for reconsideration are not a substitute for appeal or a means of attacking some
 19 perceived error of the court. *See Twentieth Century–Fox Film Corp. v. Dunnahoo*, 637 F.2d
 20 1338, 1341 (9th Cir.1981).

21 **A. Due Process Violation Claim**

22 Defendants’ first argument for reconsideration is that the Court committed clear error by
 23 relying on *Nonnette v. Small*, 316 F.3d 872 (9th Cir. 2002), and *Burnsworth v. Gunderson*, 179
 24 F.3d 771 (9th Cir. 1999), because “subsequent cases have implicitly rejected the authority upon
 25 which these cases relied.” (Mot. Reconsideration 4:11–13). In the Court’s previous Order, it

1 explained that when an inmate is subject to segregation due to a disciplinary hearing in which
2 the adverse finding was not based on any evidence, the lack of a fair hearing violates due
3 process. (Order Denying Mot. Dismiss 8:9–12). The *Gunderson* court explained that in prison
4 disciplinary hearings, due process requires that the board’s findings be supported by “some
5 evidence in the record.” 179 F.3d at 775. “Thus, a plaintiff may have their due process rights
6 violated even if they have not demonstrated a cognizable liberty interest.” (Order Denying Mot.
7 Dismiss 8:12–14) (citing *Gunderson*, 179 F.3d at 775). Because Plaintiff alleged that his
8 charge was not based on evidence, the Court found that Defendants’ argument that he failed to
9 identify a property or liberty interest was not applicable, based on the Ninth Circuit cases.
10 (Order Denying Mot. Dismiss 8:18–25).

11 Defendants contend that the *Gunderson* court relied on Supreme Court concurrences
12 relating to state clemency, appeal, and parole proceedings when concluding that there was a
13 requirement for “some evidence.” (Mot. Reconsideration 4:14–17). But, they point out, in a
14 2011 Supreme Court decision, the Court held that a state-created liberty interest in parole did
15 not create a minimum “some evidence” due process requirement, even if the state law required
16 it. (*Id.* 5:3–13) (citing *Swarthout v. Cooke*, 562 U.S. 216 (2011)). Thus, they argue, if a state-
17 created interest in parole did not create a minimum “some evidence” requirement, a state-
18 created prison disciplinary proceeding is not enough to establish such a requirement. (*Id.* 5:22–
19 26). Defendants assert that because *Swarthout* bars an argument that the law is clearly
20 established, the Court erred by not granting qualified immunity on this claim. (*Id.* 5:26–6:5).

21 As an initial matter, Defendants could have raised this argument in their Reply brief
22 after filing their initial Motion to Dismiss, and thus it is improper for them to make the
23 argument in a Motion for Reconsideration. “Motions for reconsideration are generally
24 disfavored, and may not be used to present new arguments or evidence that could have been
25 raised earlier.” *Fuller v. M.G. Jewelry*, 950 F.2d 1437, 1442 (9th Cir. 1991); *see also Marlyn*

1 *Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009) (“A
2 motion for reconsideration ‘may not be used to raise arguments or present evidence for the first
3 time when they could reasonably have been raised earlier in the litigation.’”) (quoting *Kona*
4 *Enterprises*, 229 F.3d at 890). Further, such motions should not be used for the purpose of
5 asking a court “to rethink what the court had already thought through—rightly or wrongly.”
6 *Defenders of Wildlife v. Browner*, 909 F. Supp. 1342, 1351 (D. Ariz. 1995). Plaintiff cited both
7 *Gunderson* and *Nonnette* in his Response brief for their holdings that due process is violated
8 when a disciplinary conviction is completely unsupported by evidence. (Resp. to Mot. Dismiss
9 at 7–8). In Defendants’ Reply, they do not cite *Swarthout* nor make the argument made in their
10 Motion for Reconsideration. (See Reply 2:11–18).

11 Regardless, Defendants do not meet their burden of demonstrating that the Court
12 committed clear error by relying on these two Ninth Circuit cases, which have not been
13 overruled and are still binding legal precedent, even if they cited *Woodard* concurrences that
14 have since been “implicitly rejected” by the *Swarthout* Court. (See Mot. Reconsideration 5:3–
15 13) (citing *Ohio Adult Parole Authority v. Woodard*, 523 U.S. 272 (1998)). The *Gunderson*
16 court primarily relied on the Supreme Court’s ruling in *Superintendent v. Hill* when it stated
17 that “the minimum requirements of procedural due process require that the findings of the
18 prison disciplinary board be supported by some evidence in the record.” *Gunderson*, 179 F.3d
19 at 775 (cleaned up) (citing *Superintendent v. Hill*, 472 U.S. 445, 454–55 (1985)). To reach that
20 conclusion, it considered the Supreme Court’s holding that “revocation of good time does not
21 comport with the minimum requirements of procedural due process unless the findings of the
22 prison disciplinary board are supported by some evidence in the record.” 472 U.S. at 454
23 (cleaned up). And in a parenthetical, the *Gunderson* court noted *Hill*’s reasoning that
24 “[r]equiring a modicum of evidence to support a [prison disciplinary’s board’s decision] will
25 help to prevent arbitrary deprivations without threatening institutional interests or imposing

1 undue administrative burdens.” *Gunderson*, 179 F.3d at 775 (quoting *Hill*, 472 U.S. at 454–55).
2 The *Gunderson* court’s holding was not based solely, or even primarily, on the *Woodard*
3 concurrences noted by Defendants, and remains clearly established law for purposes of
4 qualified immunity.

5 Lastly, Defendants fail to cite a case, precedential or otherwise, supporting their
6 argument. Instead, they cite a case from the District of Idaho, in which the court found that
7 “for Idaho inmates . . . previous Ninth Circuit case law permitting due process claims in inmate
8 settings where no liberty interest is found, *e.g.*, *Gunderson*, 179 F.3d at 775, no longer provide
9 viable legal grounds for relief.” (Mot. Reconsideration 5:14–21) (quoting *Stanley v. St. Paul*,
10 773 F. Supp. 2d 926, 929 (D. Idaho 2011)). However, the *Stanley* court was referring to a due
11 process interest in parole-related issues, not a disciplinary hearing, and noted that Idaho did not
12 have such an interest. *Stanley*, 773 F.Supp.2d at 929. It did not address the issue as it pertains
13 to prison disciplinary hearings. Defendants’ Motion for Reconsideration as to Plaintiff’s due
14 process claim is DENIED.

15 **B. Retaliation Claim**

16 As for Plaintiff’s retaliation claim, Defendants argue that (1) the Court committed clear
17 error by finding that their alleged actions were motivated by prior grievances; and (2) even if
18 Plaintiff had alleged that he filed a grievance, there are no specific allegations in the Complaint
19 that Defendants knew about the grievances before filing the attempt theft charge. (Mot.
20 Reconsideration 6:8–7:25).

21 First, Defendants argue that there are no allegations that Plaintiff submitted a paper
22 grievance, but only that he made verbal complaints pursuant to Administrative Regulation
23 (“AR”) 740. (*Id.* 6:8–18). The Court noted in its previous Order that Plaintiff alleged that he
24 filed an inmate grievance. (Order Denying Mot. Dismiss 5:10–12). In his Complaint, Plaintiff
25 states that AR 740 requires inmates to first attempt to resolve disputes before submitting an

1 informal inmate grievance. (Compl. at 8). But in the very next paragraph he alleges that “when
2 the following occurred, he was in fact filing an inmate grievance per AR 740,” and on page 9
3 he asserts that because he “was engaged in filing a informal grievance,” Defendants retaliated
4 against him. (*Id.* at 8–9). Construing *pro se* filings liberally and drawing reasonable inferences
5 from the Complaint’s allegations, the Court did not commit clear error by inferring that
6 Plaintiff alleged he filed at least one written grievance. *See Navarro v. Block*, 250 F.3d 729,
7 732 (9th Cir. 2001).

8 Second, Defendants argue that the Court clearly erred in finding that Plaintiff
9 sufficiently alleged that they knew of the grievance. (Mot. Reconsideration 7:2–25). They
10 assert that the allegation that Officer Lopez, Defendants’ supervisor, called the medical
11 department about the syringe incident cannot suffice for the inference that Defendants knew of
12 the grievance. (*Id.*). The Court found that Plaintiff’s retaliatory motive allegations were
13 sufficient for the pleading stage of proceedings because Plaintiff alleged that Defendant Henry
14 knew about the grievances he filed against her, Defendants’ supervisor Officer Lopez called the
15 medical department regarding the syringe incident, and the theft charge was filed soon after his
16 grievance was filed about the syringe incident. (Order Denying Mot. Dismiss 5:10–23).

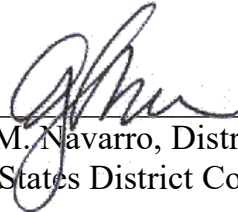
17 Defendants again fail to meet their burden of demonstrating that the Court clearly erred
18 in its finding. Defendants are correct that timing alone is not enough, although it *is*
19 circumstantial evidence of retaliatory intent. *See Pratt v. Rowland*, 65 F.3d 802, 808 (9th Cir.
20 1995). In the Court’s previous Order, it did not rely on timing alone. Plaintiff’s additional
21 allegations are sufficient to support the inference. Not only does Plaintiff allege that he
22 complained to Defendants’ supervisor, who investigated the incident, he alleges that
23 Defendants admitted in their report that the insulin syringe was returned and therefore no theft
24 occurred. Accordingly, Defendants’ Motion for Reconsideration of Plaintiff’s retaliation claim
25 is DENIED.

1 **IV. CONCLUSION**

2 **IT IS HEREBY ORDERED** that Defendants' Motion for Reconsideration, (ECF No.
3 42), is **DENIED**.

4 **IT IS FURTHER ORDERED** that the Plaintiff's Motion for Leave, (ECF No. 45), is
5 **DENIED**.

6 **DATED** this 10 day of March, 2025.

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11 Gloria M. Navarro, District Judge
12 United States District Court
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